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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 UNITED STATES OF AMERICA,

Case No. 2:20-CR-19 JCM (NJK)

8 Plaintiff(s),

ORDER

9 v.

10 BARRY ALLEN GABELMAN,

11 Defendant(s).

12
13 Presently before the court is Barry Allen Gabelman's ("defendant") emergency motion to
14 reconsider. (ECF No. 36).

15 Defendant argues that "[a] motion for reconsideration may be granted in three situations:
16 (1) when there is newly discovered evidence; (2) when the court has committed clear error; and
17 (3) when there is an intervening change in the controlling law." (ECF No. 36 at 3 (citing 89
18 *Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999))). But defendant does not
19 present any newly discovered evidence, does not argue that the court committed clear error, and
20 does not point to any intervening change in controlling law.

21 Instead, the entirety of defendant's motion is predicated on the recent spread of the novel
22 strain of coronavirus, COVID-19. (*See generally* ECF No. 36). The court notes that regardless
23 of where defendant is housed—whether that be Southern Nevada Detention Center or a halfway
24 house—defendant is at risk of contracting COVID-19. In that regard, he is no different than any
25 other Clark County resident, Nevadan, or American. The court acknowledges that the spread of
26 COVID-19 may be acutely possible in the penological context, but the court cannot release every
27 detainee at risk of catching COVID-19 because the court would be obligated to release every
28 detainee.

1 Defendant notes that his counsel inadvertently filed the instant motion on a
2 nonemergency basis on March 19, 2020, and asks the court to strike the prior iteration of this
3 motion. (ECF No. 36 at 1 n.1); (*see* ECF No. 35). The court declines defendant's invitation to
4 address this motion on an emergency basis. Instead, the court denies the emergency motion
5 (ECF No. 36) and will allow briefing on the nonemergency motion (ECF No. 35) in the ordinary
6 course.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's emergency
9 motion to reconsider (ECF No. 36) be, and the same hereby is, DENIED.

10 DATED March 23, 2020.

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UNITED STATES DISTRICT JUDGE